IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

...

D.B. CIVIL SPECIAL APPEAL NO.462/2005

The Principal Vyas Nursing Institute

Versus

Vikas Malviya and another

Date of Order : 10.4.2006

PRESENT

HON'BLE MR.RAJESH BALIA, J.
HON'BLE MR. JUSTICE R.P. VYAS

Mr.M.R. Singhvi, for the appellant

...

Heard the learned counsel for the appellant.

This appeal is directed against the order of the learned Single Judge dtd.14.2.2005 allowing the writ petition filed by the respondent No.1.

The respondent No.1 who had secured merit position at 408 was allotted payment seat for pursuing nursing course and was allotted to the present appellant in the order of his merit. The respondent – petitioner having come to know that free seat has been offered to another student standing lower in the order of merit , filed writ

petition No.553/2004 which came to be allowed vide judgment under appeal finding that it is admitted case the petitioner's number in the merit was 408 and the respondent No.5 who was allotted free seat was standing at serial No.726 according to the State Government whereas according to the respondent No.5, his merit was 508. It goes without saying that he was much lower in merit. The explanation given by the State Government for this anamoly was that at the time when the admission was given to the petitioner, payment seat was available, but because later on some persons left the course, the respondent No.5 was admitted to free seat. This explanation was not found justifiable for allotting free seat to the person lower in merit by the learned Single Judge with which we agree. Admittedly, free seats are allotted on the basis of merit.

As a matter of fair play, if any person leaves the course in between making free seat available, the benefit of free seat must go to such person who is next higher in order of merit instead of offering such free seat to the person lower in order of merit. Moreover, we find that so far as allotment of free seat and paid seat is concerned, it is a matter between the applicant and the State

Government and the Institute has no say in the matter of allotment of paid seat or free seat. That being so, so far as the petitioner's case that he was entitled to free seat is concerned, the appellant was not even a necessary party. The real controversy appears to be that since the petitioner – respondent was admitted against the paid seat and the allotment of paid seat to the respondent – petitioner was found to be erroneous, he will have to refund the amount.

We are of the opinion that this is a matter between the State Government and the appellant which was not subject matter of writ petition at all and is not required to be adjudicated in this appeal. Moreover, if the appellant has any grievance, it can make a representation to seek appropriate relief, but the order of the learned Single Judge qua the respondent – petitioner, is not required to be interfered with.

The learned Counsel for the appellant urges that only show cause notices were issued before admission and therefore, petition ought not to have been decided at the stage of admission.

We are of the opinion that so far as controversy raised in the writ petition was concerned, the appellant was not even necessary party and therefore, this technical ground does not come in way of deciding writ on merits when the real contesting parties were before the Court and they had no objection to the petition being decided finally

Accordingly, this appeal fails and is hereby dismissed. No order as to costs.

(R.P.VYAS),J. **(RAJESH BALIA)J.**

SS/-